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INTELLECTUAL PROPERTY LAW

PATENT TRADEMARK  
AND COPYRIGHT LAWTEL. (216) 771-3800  
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October 14, 2003

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below:

To Fax No: **1 (703) 308-5077 ( 9 pages)**By: Christine Kotran

Christine Kotran

Date: October 14, 2003Mail Stop 16  
Director of the US Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450**RECEIVED****OCT 15 2003****OFFICE OF PETITIONS**Re: Improper Payment Charged to:  
American Express Credit Card No. 3727-144562-61003  
U.S. Patent Appln. 09/308,408 filed 6/28/1999 / Our Ref. RO0206US.CPA

Gentlemen:

As permitted under 37 C.F.R. 1.26 - *Refunds*, submitted herewith is a request for a refund of \$440.00 charged to American Express Credit Card No. 3727-144562-61003. The \$440.00 represents the filing fee for a small entity RCE (Request for Continued Examination) application that was not filed and a Petition for Extension of Time, the documents of which were mailed to the USPTO on October 3, 2003 and received at the USPTO on October 6, 2003. The \$440.00 includes \$385.00 (Code 2801, the RCE filing fee) and \$55.00 (Code 2251, one-month extension of time fee). The proper extension of time fee will be resubmitted when an appropriate response is next filed.

Also enclosed is a copy of a communication from the USPTO dated 10/09/2003 which refused entry of the RCE application because of improper timing (i.e., prosecution of the parent application was not yet closed), item 3 of which should have been checked. The error in mistakenly checking items 2 and 7 was determined in a telephone conference with Ms. E. Payton on October 14, 2003.

#471 Reg for  
renewal  
11-14-03US PATENT & TRADEMARK  
OFFICE  
2003 NOV - 6 PM 4:3  
PATENT MAIL ROOM  
DIRECTOR

The following documents (copies enclosed) verify this situation:

- 1) Request for Continued Examination Transmittal
- 2) Fee Transmittal
- 3) Petition for Extension of Time (and extension fee transmittal)
- 4) Credit Card Payment Form authorizing a charge of \$440.00
- 5) Post card receipt stamped by the OIPE on October 6, 2003
- 6) 10/09/2003 communication from Ms. E. Payton

Further, instructions to pursue this refund were obtained in a telephone conference between a legal advisor at the Office of Patent Legal Administration and Ms. Katherine Vieyra of our staff on October 14, 2003.

Accordingly, please immediately credit American Express Credit Card No. 3727-144562-61003 for the \$440.00 amount.

Please do not hesitate to contact us if there are any questions concerning the processing of this credit.

Sincerely yours,



Christine Kotran for  
Maxine Singer, Administrator

Att.  
11/18/2002 MS/ck

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PTO/SB/30 (08-03)

Approved for use through 07/31/2006. OMB 0851-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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# Request For Continued Examination (RCE) Transmittal

Address to:  
Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	09/308,408
Filing Date	June 28, 1999
First Named Inventor	Andreas Fellingner
Art Unit	
Examiner Name	
Attorney Docket Number	RO0206US.CPARCE (#90568)

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☒ Consider the arguments in the Appeal Brief or Reply Brief previously filed on June 24, 2003

ii. ☐ Other \_\_\_\_\_

b. ☐ Enclosed

i. ☐ Amendment/Reply

iii. ☐ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/ Declaration(s)

iv. ☐ Other \_\_\_\_\_

## 2. Miscellaneous

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(l) required)

b. ☐ Other \_\_\_\_\_

## 3. Fees

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, or credit any overpayments, to

a. ☐ Deposit Account No. \_\_\_\_\_

i. ☐ RCE fee required under 37 CFR 1.17(e)

ii. ☐ Extension of time fee (37 CFR 1.135 and 1.17)

iii. ☐ Other \_\_\_\_\_

b. ☐ Check in the amount of \$ \_\_\_\_\_ enclosed

c. ☒ Payment by credit card (Form PTO-2038 enclosed)

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	D. Peter Hochberg	Registration No. (Attorney/Agent)	24,603
Signature	<i>[Signature]</i>	Date	October 3, 2003

### CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	Katherine R. Vieyra	Date	October 3, 2003
Signature	<i>[Signature]</i>		

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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PTO/SB/17 (08-03)

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**FEE TRANSMITTAL  
for FY 2003**

Effective 01/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$ 440.00)

**Complete if Known**

Application Number 09/308,408

Filing Date June 28, 1999

First Named Inventor Andreas Fellingner

Examiner Name

Art Unit

Attorney Docket No. RO0206US.CPARCE (#90568)

**METHOD OF PAYMENT (check all that apply)**☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None☐ Deposit Account:Deposit  
Account  
Number  
Deposit  
Account  
Name

The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments☐ Charge any additional fee(s) during the pendency of this application☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 180	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)			

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	20** =	X	
Multiple Dependent	3** =	X	

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

\*\*or number previously paid, if greater. For Reissues, see above

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	2053 65	Non-English specification	
1812 2,520	2812 1,260	For filing a request for ex parte reexamination	
1804 820*	2804 410*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	2805 920*	Requesting publication of SIR after Examiner action	55.00
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 830	2253 415	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,870	2255 935	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	2451 755	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1602 470	2602 235	Design issue fee	
1603 630	2603 315	Plant issue fee	
1460 130	2460 65	Petitions to the Commissioner	
1807 50	2807 25	Processing fee under 37 CFR 1.17(q)	
1808 180	2808 90	Submission of Information Disclosure Stmt	
8021 40	2821 20	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	385.00
1802 900	2802 450	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 440.00)

**SUBMITTED BY**

Name (Print/Type) D. Peter Hochberg

Registration No.  
(Attorney/Agent)

24,603

Telephone 216-771-3800

Signature

Date October 3, 2003

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1460, Alexandria, VA 22313-1460.

If you need assistance in completing the form, call 1-800-PTO-8199 and select option 2.

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)**

Docket Number (Optional) RO0206US.CPARCE2

In re Application of **Andreas Fellingner**Application Number **09/308,408**Filed **June 28, 1999**For **STORAGE DEVICE FOR MEDICAL SWABS**

Art Unit

Examiner

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

- ☒ One month (37 CFR 1.17(a)(1)) \$ 110.00
- ☐ Two months (37 CFR 1.17(a)(2)) \$ \_\_\_\_\_
- ☐ Three months (37 CFR 1.17(a)(3)) \$ \_\_\_\_\_
- ☐ Four months (37 CFR 1.17(a)(4)) \$ \_\_\_\_\_
- ☐ Five months (37 CFR 1.17(a)(5)) \$ \_\_\_\_\_

- ☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ 55.00.
- ☐ A check in the amount of the fee is enclosed.
- ☒ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to change fees in this application to a Deposit Account.
- ☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number \_\_\_\_\_.

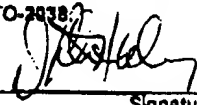
I have enclosed a duplicate copy of this sheet.

I am the ☐ applicant/inventor.☐ assignee of record of the entire interest. See 37 CFR 3.71.Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96). **OCT 15 2003**☒ attorney or agent of record. Registration Number 24,603☐ attorney or agent under 37 CFR 1.34(a).

Registration number if acting under 37 CFR 1.34(a) \_\_\_\_\_

**OFFICE OF PETITIONS****WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.October 3, 2003

Date



Signature

216-771-3800

Telephone Number

D. Peter Hochberg

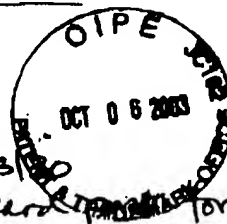
Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Due Date 10-5-03 Date 10-3-03   Appl. Pat.    T.M.    ~~PCT~~    PROV      Spec. Pages    Claims      Drawings Sheets    (Inf.   )   Declaration   Assignment w/Letter☒ Transmittal Letter (2 copies) RCE: PD/SS/☒ Check Amt. \$440.00 - credit and transmittal form   Amendment Pat.    T.M.      Appeal with Check \$      Appeal Brief pages    with check \$   ☒ Others fee transmittal formPetition for ExtensionSerial No. 09/208,408 Filed 6-28-99 Docket P00206US.CARCE2

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## UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

*R00206 US CPA*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,408	06/28/1999	ANDREAS FEILINGER	<i>BLA 0010</i>	6097

7590 10/09/2003

D. PETER HOCHBERG CO., L.P.A.  
1940 EAST 6TH STREET-6TH FLOOR  
CLEVELAND, OH 44114-2294

EXAMINER	
LUONG, SHIAN TINH NHAN	
ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# COPY

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OFFICE OF PETITIONS

Commissioner for Patents  
United States Patent and Trademark OfficeP.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

**COPY**

DATE MAILED:

**NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)**

The request for continued examination (RCE) under 37 CFR 1.114 filed on 10/6/03 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
- ☒ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date on or after June 8, 1995 will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

**A copy of this notice MUST be returned with any reply.**

Direct the reply and any questions concerning this notice to:

E. Patten, Technology Center 3700  
(703) 30 5-3571

FORM PTO-2061 (Rev. 7/2003)

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